

DOCKET NO. 568787

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	
CHAND INVESTMENTS CORPORATION	§	
D/B/A ROSEMEADE FOOD MART	§	ALCOHOLIC
PERMIT/LICENSE NO(s). BQ574742	§	
	§	
DENTON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-08-3304)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this 21st day of October 2008,
the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle Groves. The hearing convened on August 1, 2008 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on September 24, 2008. The Proposal for Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's permits and licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on November 17, 2008 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 21st day of October 2008,
at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150-A
Dallas, Texas 75235
VIA FACSIMILE TO: (214) 956-8611

Chand Investments Corporation
d/b/a Rosemeade Food Mart
RESPONDENT
3700 Old Denton Rd.
Carrollton, TX 75007
VIA FIRST CLASS MAIL

Sandra K. Patton
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Enforcement Division

SKP/aa

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

FACSIMILE TRANSMISSION

DATE: 09-25-08

FROM: Kyle Groves
Administrative Law Judge

No. of Pages: 6
(Including cover sheet)

FAX TO:	FAX NO.:	Transaction No./Time:
Alan Steen	512-206-3203	
Sandra Patton	713-426-7965	
Lou Bright	512-206-3498	

Message: Proposal for Decision – 458-08-3304
TABCO V. Chand Investments Corp. D/B/A Rosemeade Food Mart

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 25, 2008

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA FACSIMILE 512/206-3203

RE: Docket No. 458-08-3304 Texas Alcoholic Beverage Commission V. Chand Investments Corp. D/B/A Rosemeade Food Mart

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyle Groves".

Kyle Groves
Administrative Law Judge

KG/slp
Enclosure

xc Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**
Chand Investments Corp. d/b/a Rosemeade Food Mart, **VIA REGULAR MAIL 3700 Denton Road, Carrollton, Texas 75007**

DOCKET NO. 458-08-3304

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	
	§	OF
CHAND INVESTMENTS CORP.	§	
D/B/A ROSEMEAD FOOD MART	§	
PERMIT NO. BQ-574742	§	
DENTON COUNTY TEXAS	§	
(TABC CASE NO. 568787)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Chand Investments Corp. d/b/a Rosemead Food Mart (Respondent) seeking cancellation of Respondent's wine and beer retailer's off-premise permit BQ-574742. TABC alleged Respondent, his agent, servant, or employee, with criminal negligence, sold, served, dispensed or delivered an alcoholic beverage to a minor in violation of TEX. ALCO. BEV. CODE ANN. § 106.13.

This Proposal for Decision finds the Respondent's permit should be canceled

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter convened August 1, 2008. Attorney Sandra Patton represented TABC. The Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing was concluded and the record closed that same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. EVIDENCE

TABC staff offered documentary evidence showing:

(a) On March 7, 2005, Respondent was issued wine and beer retailer's off-premise permit BQ-574742

(b) On June 6, 2008, Petitioner sent a Notice of Hearing, by certified mail, return receipt requested, to Respondent asserting that the TABC was seeking to cancel Respondent's permit. The return receipt was signed on June 10, 2008.

(c) The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought may be granted by default."

III. STATUTORY AUTHORITY

TEX. ADMIN. CODE § 61.71 (a) (1) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period.

TEX. ADMIN. CODE §155.55 states:

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal

for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

IV. PROPOSED FINDINGS OF FACT

Chand Investment Corp. d/b/a Rosemead Food Mart (Respondent) is the holder of wine and beer retailer's off-premise permit BQ-574742.

Respondent was notified of the factual allegations against Respondent in the notice of hearing issued by TABC on June 6, 2008. The notice of hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the Commission will proceed without you and the allegation(s) in this notice will be deemed admitted as true, and the relief sought may be granted by default."

3. Respondent was notified of the date, time, and location of the scheduled hearing by the notice of hearing dated June 6, 2008.
4. On August 1, 2008, the hearing in this matter convened before ALJ Kyle J. Groves. Sandra Patton appeared for Petitioner. Respondent failed to appear.
5. On or about September 8, 2008, Respondent, his agent, servant, or employee, with criminal negligence, sold, served, dispensed or delivered an alcoholic beverage to a minor in violation of TEX. ALCO. BEV. CODE ANN. § 106.13.

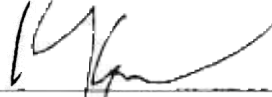
V. PROPOSED CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.11.

2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The factual allegations in the notice of hearing are deemed admitted as true.
5. By Respondent, his agent, servant, or employee, with criminal negligence, selling, serving, dispensing or delivering an alcoholic beverage to a minor, Respondent, his agent, servant, or employee violated TEX. ALCO. BEV. CODE ANN. § 106.13.

- 6 Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's wine and beer retailer's off-premise permit BQ-574742 should be canceled.

SIGNED SEPTEMBER 24TH, 2008.



KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS